

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5812 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

KANTIBHAI J. PATEL

Versus

STATE OF GUJARAT

Appearance:

Kum. V.P.Shah, Advocate, for the Petitioners.

Shri D.N.Patel, Assistant Government Pleader, for the
Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 01/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat
(respondent No.2 herein) on 28th December 1983 but
communicated on 3rd January 1984 under section 8 (4) of the

Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 31st July 1987 in Appeal No.Surat-381 of 1984 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 12105.49 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioners are sons of one Jagjivanbhai Bhikhabhai who breathed his last on 5th August 1976. For the sake of convenience I shall refer to him as the deceased. He was in occupation and possession of certain properties within the urban agglomeration of Surat. On coming into force of the Act, he was required to file the necessary declaration in the prescribed form under section 6 (1) of the Act. It appears that the necessary declaration in the prescribed form was prepared and his signature was obtained thereon but, before it can be submitted by him in person, he breathed his last. It appears that someone, presumably his brother, presented that declaration in the prescribed form signed by the deceased in the office of respondent No.2 herein on 10th August 1976 along with his own declaration. That was duly processed by respondent No.2. After observing necessary formalities under section 8 thereof, by his order passed on 28th December 1983 but communicated on 3rd January 1984 under section 8 (4) thereof, respondent No.2 declared the holding of the deceased to be in excess of the ceiling limit by 12105.49 square metres. Its copy is at Annexure-C to this petition. That aggrieved the petitioners. They carried the matter in appeal before the Appellate Authority under section 33 of the Act. It came to be registered as Appeal No.Surat-381 of 1984. By the order passed on 31st July 1987 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-D to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-C to this petition as affirmed in appeal by the appellate order at Annexure-D to this petition.

3. Learned Advocate Kum.Shah for the petitioners is right in her submission that the constructed properties in existence prior to coming into force of the Act deserve exclusion from the holding of the deceased in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 SUPREME COURT at page 1567. It appears that they have been included in the holding of the petitioners. That part of the impugned order at Annexure-C to this petition as affirmed in appeal by the appellate order at

Annexure-D to this petition cannot be sustained in law.

4. Kum.Shah for the petitioners has pressed into service the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF U.P. reported in AIR 1993 SUPREME COURT at page 2465 in support of her submission that the land bearing survey No.35/2A situated at Jahangirabad within the urban agglomeration of Surat should have been excluded from the holding of the deceased as it was used for agricultural purpose on the date of coming into force of the Act. As against this, learned Assistant Government Pleader Shri Patel for the respondents has urged that the authorities below have found that no agricultural operations were carried on therein at the relevant time. Since this would be a finding of fact, runs the submission of learned Assistant government Pleader Shri Patel for the respondents, this Court need not interfere with it under Article 226 of the Constitution of India. In the rejoinder Kum. Shah for the petitioners has urged that the so-called finding of fact is based on the material pertaining to the records of 1982-83 and not on the records pertaining to year 1975-76 and prior thereto. Besides, as pointed out hereinabove by learned Advocate Kum.Shah for the petitioners, on the spot inspection of the site was also made some time in 1983 if not later. According to her, the position as on the date of coming into force of the Act will have to be ascertained for the purpose of application of the aforesaid binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM (supra).

5. I find considerable force in the submission urged before me by learned Advocate Kum.Shah for the petitioners. It transpires from the impugned order at Annexure-C to this petition that the record pertaining to 1982-83 was seen for the purpose of deciding whether or not any agricultural operations were carried on in the aforesaid land. Besides, a reference is also made to on the spot inspection for ascertaining the position in that regard. That would have obviously been done at the time of taking up the declaration under section 6 (1) of the Act for the purpose of passing the impugned order at Annexure-C to this petition. That would certainly be some time in 1983 if not later. In order to consider the applicability or otherwise of the aforesaid binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM (supra), it will have to be ascertained whether or not any Master Plan answering its definition contained in section 2 (h) of the Act was in existence on the date of coming into force of the Act, what was the situation of the land in question therein and whether or not agricultural operations were carried on therein at the relevant time. This has to be done in the instant case.

6. The authorities below have not accepted the case of the joint Hindu family property in the hands of the deceased. Before this court is produced entry No.221 in the record of rights (Village Form No.6) pertaining to the aforesaid land. It appears from that the deceased acquired land in partition of the ancestral property along with his brother. That partition appears to have been effected some time on 18th July 1933. Kum.Shah for the petitioners shows to me the SSC Certificate of Ramchander Jagjivanbhai (who is stated to have breathed his last on 9th November 1984) showing his birth date as 5th April 1930. She informs me that he was the eldest son of the deceased. He was alive on 18th July 1933 when the partition took place and the deceased got his share therein. In that view of the matter, the acquisition of the aforesaid land by way of his share in partition would acquire the character of a joint Hindu family property in his hands. Then it would remain so if there is any further addition of male members in the family. It cannot be gainsaid that every male member born in the family acquires his right in the joint Hindu family property from birth. Since there is no material on record in that regard, I have chosen only to state the principles of Hindu Law regarding the joint Hindu family property without deciding whether or not the deceased had any son alive on 18th July 1933 when he acquired the aforesaid land as his share in partition of the joint Hindu family property between him and his brother.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-C to this petition as affirmed in appeal by the order at Annexure-D to this petition cannot be sustained in law. The matter will have to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It will be open to the petitioners to take up the case that the disputed land in the hands of the deceased was a joint Hindu family property by producing the necessary evidence on record.

8. It is needless to say that the constructed properties will have to be excluded from the holding of the deceased in view of the aforesaid binding ruling of the Supreme Court in the case of MEERA GUPTA (supra) and an inquiry has to be made about the applicability or otherwise of the aforesaid binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM (supra) in the light of what is pointed out hereinabove.

9. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 28th December 1983 but communicated on 3rd January 1984 at Annexure-C to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at

Ahmedabad on 31st July 1987 in Appeal No.Surat-381 of 1984 at Annexure-D to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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